

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**JAVIER ORTIZ LOPEZ,**  
  
**Plaintiff(s),**  
  
**v.**  
  
**COURTYARD BY MARRIOTT**  
**IRVINE CA,**  
  
**Defendant(s).**

**CASE NO. SACV 09-1417 DOC  
(MLGx)**

**ORDER REMANDING CASE**

**Orange County Superior Court Case  
No.: 30-2009-00298260**

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Before the Court is Defendant Courtyard Management Corporation, erroneously sued as Courtyard by Marriott Irvine CA (“Defendant”)’s response to the Court’s April 5, 2010 Order to Show Cause as to why this action should not be remanded to state court (the “OSC”). Defendant removed this lawsuit on December 3, 2009 on diversity grounds pursuant to 28 U.S.C. § 1332. Complete diversity of citizenship existed at the time of removal as Plaintiff was a citizen of California at the time of removal and Defendant was a citizen of Delaware at the time of removal. The OSC focused on whether the amount in controversy requirement of 28 U.S.C. § 1332(a) had been satisfied.

1 Plaintiff is a former employee of Defendant's and alleges that Defendant  
 2 discriminated against him on the basis of his gender by providing female employees (but not  
 3 Defendant) with complimentary dry cleaning. The complaint filed in state court brings a single  
 4 cause of action for general negligence and seeks damages in the amounts of: (1) \$11, 980.77 for  
 5 loss of earnings; (2) \$100,000 for pain, suffering, and inconvenience; (3) \$100,000 for emotional  
 6 distress; and (4) \$2,000,000 for punitive damages. Defendant argues that the damages alleged in  
 7 the state court complaint satisfy the amount in controversy requirement of 28 U.S.C. § 1332.  
 8 This Court disagrees.

9 Even where neither party contests the Court's jurisdiction, it is appropriate for the  
 10 Court to *sua sponte* raise the issue. *See, e.g., California ex rel. Sacramento Metro. Air Quality*  
 11 *Mgmt. Dist. v. United States*, 215 F.3d 1005, 1009 (9th Cir. 2000). The "strong presumption"  
 12 against removal is ordinarily satisfied if plaintiff's complaint pleads an amount in excess of  
 13 \$75,000. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The Court is nonetheless  
 14 "not bound by the pleadings of the parties, [and] may, by its own motion, if led to believe that  
 15 jurisdiction is not properly invoked, inquire into the facts as they really exist." *McNutt v. Gen.*  
 16 *Motors Acceptance Corp.*, 298 U.S. 178, 184, 56 S.Ct. 780 (1936). "[W]hen a complaint filed in  
 17 state court alleges on its face an amount in controversy sufficient to meet the federal  
 18 jurisdictional threshold, [the amount in controversy] requirement is presumptively satisfied  
 19 unless it appears to a '**legal certainty**' that the plaintiff cannot actually recover that amount."  
 20 *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007); *see also St. Paul*  
 21 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938) (stating that "the sum claimed  
 22 by plaintiff controls if the claim is apparently made in good faith" and "[i]t must appear to a  
 23 legal certainty that the claim is really for less than the jurisdictional amount to justify  
 24 dismissal"); *Garza v. Bettcher indus., Inc.*, 752 F. Supp. 753, 756 (E.D. Mich. 1990). The legal  
 25 certainty test applies "when a rule of law or limitation of damages would make it virtually  
 26 impossible for a plaintiff to meet the amount-in-controversy requirement." *Pachinger v. MGM*

1 *Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 364 (9th Cir. 1986).<sup>1</sup>

2 In opposition to the OSC, Defendant relies upon the recoverability of damage  
3 awards in excess of \$75,000 in other Fair Employment Housing Act (FEHA) cases, as well as  
4 the state court complaint's claims for pain, suffering, and inconvenience, emotional distress, and  
5 punitive damages. *See* Docket 5 at 4-5.

6 Though Plaintiff may have previously filed an administrative claim arising under  
7 FEHA, the state court complaint's only cause of action is for negligence. The state court  
8 complaint neither asserts a stand-alone cause of action for a violation of FEHA, nor alleges a  
9 violation of FEHA as predicate to the cause of action for negligence. In claims alleging  
10 discrimination on the basis of gender, a cause of action predicated on a violation of FEHA is  
11 separable from a cause of action predicated upon negligence. *See, e.g., Gonzalez v. Roadway*  
12 *Exp., Inc.*, No. B177637, 2005 WL 3470678, at \*1 (Cal. App. 2d Dist. Dec. 20, 2005). Even if  
13 this Court were to liberally construe the claims in Plaintiff's state court complaint as a result of  
14 his *pro se* status, *see Brazil v. United States Dept. of Navy*, 66 F.3d 193, 199 (9th Cir. 1995)  
15 (holding in the context of a summary judgment motion that a *pro se* litigant is entitled to "great  
16 leeway" in asserting claims), the Court would still find, to a legal certainty, that the claims in the  
17 complaint do not entitle Plaintiff to damages equal to the amount in controversy. Emotional  
18 distress damages are available, but the state court complaint contains no factual allegations – not  
19 even summary allegations – alleging that Plaintiff suffered any emotional injury as a result of  
20 Defendant's alleged discrimination. Nor does the state court complaint allege that Plaintiff  
21 suffered pain, suffering, and inconvenience. The fact that Plaintiff filled out blanks on a form  
22 complaint provided to him does not weigh against the Court's conclusion that the damage claims  
23 were made in bad faith **and** that it appears to a legal certainty that Plaintiff cannot recover an

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25 <sup>1</sup> The Seventh Circuit has held that the determination of legal certainty is akin  
26 to the determination of frivolousness, though a claim need not be frivolous to fail the  
27 legal certainty standard. *See Pratt Central Park Ltd. Partnership v. Dames & Moore,*  
28 *Inc.*, 60 F.3d 350, 354 (7th Cir. 1995); *Boggs v. Adams*, 45 F.3d 1056, 1059 n. 7 (7th Cir.  
1995); *Loss v. Blankenship*, 673 F.2d 942, 951 (7th Cir. 1982).

1 amount in excess of the jurisdictional minimum.

2 For the foregoing reasons, the Court REMANDS this case to Orange County  
3 Superior Court.

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6 IT IS SO ORDERED.

7 DATED: April 20, 2010

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DAVID O. CARTER  
United States District Judge  
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